

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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)	
JOHNSON & JOHNSON AND LIFESCAN,)	08 Civ. 1297 (SLT)
INC.,)	
)	DEFENDANT MEDSOURCE
Plaintiffs,)	PHARMACEUTICAL, LLC’S ANSWER
)	TO CROSS –CLAIMS OF CO-
- against -)	DEFENDANTS STERLING
)	WHOLESALE, LLC AND JEFFREY B.
SOUTH POINTE WHOLESALE, INC., ET)	LITTMAN
AL.,)	
)	
Defendants.	X	

Defendant MedSource Pharmaceutical, LLC d/b/a MedSource Direct (“MedSource”), through its counsel, hereby answers Defendants Sterling Wholesale, LLC’s and Jeffrey B. Littman’s (collectively, the “Sterling Defendants”) cross-claims contained in the Sterling Defendants’ September 18, 2009 Answer to Sixth Amended Complaint with Cross Complaints (the “Cross-Claims”) as follows:

FIRST DEFENSE

The Cross-Claims fail to state a claim against MedSource upon which relief can be granted.

SECOND DEFENSE

MedSource answers each specific paragraph of the Cross-Claims as follows:

1. MedSource denies the allegations set forth in the First Cross Complaint of the Cross-Claims.

2. MedSource denies the allegations set forth in the Second Cross Complaint of the Cross-Claims.

THIRD DEFENSE

The Cross-Claims are barred to the extent the claims asserted therein are barred by the doctrines of waiver and/or estoppel.

FOURTH DEFENSE

The Cross-Claims are barred to the extent the Sterling Defendants have failed to mitigate their damages.

FIFTH DEFENSE

The Sterling Defendants may be barred from recovery, in whole or in part, on the grounds that their claims under state law are preempted.

SIXTH DEFENSE

The Cross-Claims fail because, upon information and belief, some or all of the products at issue are not counterfeit.

SEVENTH DEFENSE

The Cross-Claims fail because MedSource did not purchase from the Sterling Defendants or sell to the Sterling Defendants any of the products at issue.

EIGHTH DEFENSE

The Sterling Defendants' damages, if any, were not proximately caused by the actions of MedSource.

NINTH DEFENSE

Any alleged loss or damage sustained by the Sterling Defendants in connection with the transactions and occurrences alleged in the Cross-Claims were the result of the Sterling Defendants' own acts, omissions and negligence, or were caused by the conduct and activities of persons or firms for whose acts, conduct and activities MedSource is not responsible.

TENTH DEFENSE

The Cross-Claims against MedSource are barred by the doctrine of unclean hands.

ELEVENTH DEFENSE

Any damages that the Sterling Defendants may be entitled to are offset by their comparative fault or assumption of risk.

TWELFTH DEFENSE

The Cross-Claims against MedSource fail because the Sterling Defendants lack privity with MedSource.

RESERVATION

MedSource hereby reserves its right to assert any other affirmative defense and/or claims which may come to light during the course of discovery.

WHEREFORE, MedSource respectfully requests that the Cross-Claims be dismissed with prejudice and upon the merits, that the Sterling Defendants take nothing, that MedSource be

awarded its attorneys' fees and costs incurred in defending this action, and such other and further relief as the Court may deem necessary, just and proper under the circumstances.

Dated: October 8, 2009.

BENNETT TUELLER JOHNSON & DEERE

By: /s/ Shane L. Keppner
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Attorneys for Defendants MedSource
Pharmaceutical, LLC d/b/a MedSource Direct

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October 2009, I electronically filed the foregoing DEFENDANT MEDSOURCE PHARMACEUTICAL, LLC'S ANSWER TO CROSS – CLAIMS OF CO-DEFENDANTS STERLING WHOLESALE, LLC AND JEFFREY B. LITTMAN using the CM/ECF system which will send notification of such filing to registered individuals, including:

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